

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

H. DAVID ROY,

Appellant

v.

MBW CONSTRUCTION, INC., ET AL.

Respondents

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DOCKET NUMBER WD78673

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DATE: February 23, 2016

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Appeal From:

Circuit Court of Platte County, MO  
The Honorable Thomas Clark Fincham, Judge

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Appellate Judges:

Division Three  
James Edward Welsh, P.J., Joseph M. Ellis, and Thomas H. Newton, JJ.

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Attorneys:

Stephen Nichols, Kansas City, MO

Counsel for Appellant

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Attorneys:

Breahn Vokolek, Liberty, MO  
Gary Patton, Liberty, MO

Counsel for Respondents  
Co-Counsel for Respondents

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**H. DAVID ROY, Appellant, v.  
MBW CONSTRUCTION, INC., ET AL., Respondents.**

**WD78673**

**Platte County**

Before Division Three Judges: Welsh, P.J., Ellis, and Newton, JJ.

H. David Roy appeals the circuit court's grant of summary judgment in favor of MBW Construction, Inc., and MBW's president, Keith McConnell, on Roy's petition seeking damages for breach of implied warranty of habitability and fitness, fraudulent concealment, and unlawful merchandising practices and punitive damages for willful violation of a building code. Roy asserts the circuit court erred in granting summary judgment because (1) MBW failed to comply with the requirements of Rule 74.04 by submitting statements of fact that were defective in form and/or not supported by properly certified depositions and trial transcripts, (2) MBW failed to show entitlement to judgment as a matter of law on its affirmative defense of collateral estoppel, and (3) MBW failed to show entitlement to judgment as a matter of law on its affirmative defense of res judicata.

**Affirmed.**

**Division Three holds:**

Roy's claims for breach of implied warranty of habitability and fitness, fraudulent concealment, unlawful merchandising practices, and willful violation of a building code were barred by the doctrine of res judicata. Had Roy exercised reasonable diligence, all of these claims that were raised before the Circuit Court of Platte County could have been raised in a previously filed case that Roy brought before the Circuit Court of Clay County. The circuit court, therefore, did not err in granting summary judgment in favor of MBW.

Opinion by James Edward Welsh, Presiding Judge

February 23, 2016

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